

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.265 OF 2007

Bajirao Sayaji Jadhav. ..Appellant.

V/s.

Vishnu Kedu Nirbhavane & Ors. ..Defendants.

Mr.R.V.Govilkar a/w Sarang Aradhey for appellant.

CORAM: A.M.KHANWILKAR, J

DATE : JULY 16, 2007.

P.C. :

1. Heard counsel for the appellant. The only argument canvassed before me is that, the conclusion reached by the two Courts below, concurrent though cannot be sustained in law. To buttress this submission, reliance is placed on the decision of our High Court reported in **2007(2) Bom.C.R.256** in the case of **Raghunath Fulaji Jadhav & Anr V/s. Rajendra Dinkarrao Patil & Ors.**

2. To consider the argument on the issue of limitation, the relevant facts as found by the two Courts below are as under. The plaintiff and defendant No.3 are real brothers; while defendant Nos. 1 and 2 are the sons of Kedu Laxman Nirbhavane. That said Kedu Nirbhavane died in the year 1985. An

agreement of conditional sale deed of suit land (Ex.53) was however, executed on 9th March, 1970 by the Plaintiff and defendant No.3 in favour of father of defendant Nos. 1 and 2(Kedu Nirbhavane). At the execution of the said agreement, possession of the suit land was also delivered by plaintiff and defendant No.3 to said Kedu Nirbhavane. It was agreed by the parties to re-execute the sale deed by purchaser within 5 years on payment of consideration of Rs.2500/-. It is also agreed that the said Kedu Nirbhavane executed registered agreement of Sale (Ex.54) on 6.2.1975 in favour of the plaintiff and defendant No.3. One of the stipulation under the suit agreement dated 6th February, 1975 is that, the plaintiff shall execute Sale Deed within one month from the date of permission given by the Collector, as was required under the Provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1950. Requirement of obtaining such permission, it is common ground, was done away with by the amending Act with effect from 29th August, 1977. Significantly, said Kedu Nirbhavane died in the year 1985 and till then the Plaintiff did not demand execution of reconveyance from him. The plaintiff for the first time after nine years from the death of Kedu Nirbhavane sent a legal notice

dated 29th January, 1996 to the defendant Nos. 1 and 2 (successor-in-title of said Kedu Nirbhavane). Thereafter, the suit has been filed in 1996.

3. By virtue of amending Act, requirement of seeking permission of the Collector was dispensed with. Once the requirement of obtaining such permission was dispensed with, it would necessarily follow that the period to discharge obligation under the agreement commenced with effect from 29th August, 1977, to be discharged by the plaintiff within one month therefrom. That is so because, time is essence of the contract, on account of the stipulation in the agreement itself in that behalf. As a result, the period of limitation would start running on expiry of one month from 29th August, 1977, to be reckoned for the purpose of first part of the Article 54 of the limitation Act. Having regard to the fact situation of the present case, the Second part of the article 54 will not apply. For which reason, the fact that the defendants refused to perform his part of the contract allegedly for the first time in 1996, as is contended by the appellant/plaintiff, will be of no avail.

4. To get over this position, counsel for the

appellant pressed into service observations in paragraph-12 of the reported decision in the case of **Raghunath Fulaji Jadhav(Supra)**. According to the appellant even in that case, similar stipulation was provided in the agreement, as can be discerned from the facts noted in the paragraph-2 and paragraph-9 of the reported decision. In spite of that, the Court rejected the objection regarding the suit being barred by limitation, as is noted in paragraph-12 of the reported decision.

5. In my opinion, the exposition in the case of **Raghunath Jadhav(Supra)** is relevant to the fact situation of that case. This is so because, in that case the Court went on to hold that it was not open to the appellant therein to raise argument regarding suit being barred by limitation or that the limitation had started running on expiry of the period of six months from the date of stated amendment. The Court further held that Bhimrao ought to have informed the plaintiff that requirement of obtaining sanction of the Collector for executing sale deed was no more necessary in view of the amendment. It is further held that it is clear from the evidence on record that neither the plaintiff nor the defendants were aware about the amendment.

However, no such case has been made out by the plaintiff in the present case nor such argument was raised or considered before the two Courts below.

6. Be that as it may, it is trite to restate the well-established position that ignorance of fact is excused, ignorance of law is not (**Ignorantia Facti Excusat-Ignorantia Juris Non Excusat**). The effect of amendment of the enactment is the change brought about in law. It cannot be assumed that the appellant was ignorant of such law. Thus understood, the plaintiff became liable to discharge his obligation on and from 29th August, 1977 to be completed within one month therefrom. In such a case the first part of the Article 54 of the Limitation Act will come into play, namely, if the time is essence of the contract, in that case the limitation would start running from the date when the party to the contract fails to discharge his obligation within such specified time. Inasmuch as, the first part of Article 54 of the Limitation Act applies only when the date is fixed for the performance of the contract in the agreement itself. Whereas, the second part of Article 54 of the Limitation Act will apply when no such date is fixed for the performance of the contract. Only in the latter case the factum of the

date of refusal to discharge one's obligation or execute agreement by the defendants would become relevant to reckon the period of limitation. That principle has no application to the fact situation of the present case.

7. In my opinion, therefore, no substantial question of law arises for consideration. Hence dismissed.

(A.M.KHANWILKAR, J)